

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Docket No.: 04-12654 RGS

FRED T. VANDAM,

Plaintiff,

vs.

DAVID M. MCSWEENEY,  
TRUSTEE OF MCREALTY TRUST,  
ROCKLAND LEASE FUNDING CORP.,  
UNITED STATES OF AMERICA, AND  
GENERAL ELECTRIC COMMERCIAL  
EQUIPMENT FINANCING, a division of  
GENERAL ELECTRIC CAPITAL CORP.

Defendants.

**PLAINTIFF, FRED T. VANDAM'S LIMITED OPPOSITION TO DEFENDANT,  
DAVID M. MCSWEENEY'S MOTION TO IMPOUND AFFIDAVIT**

Counsel for the Plaintiff/Defendant-in-Counterclaim, Fred T. Vandam ("Plaintiff"), hereby files this limited opposition to counsel for the Defendant/Plaintiff-in-Counterclaim, David M. McSweeney's ("Defendant") Motion to Impound Affidavit on the grounds that the information contained therein, if not privileged, is discoverable. Plaintiff further states as follows:

1. Defendant McSweeney filed a five-count Counterclaim against Vandam alleging:  
1) Breach of Contract; 2) Violation of G.L. 244, §§ 20 & 36; 3) Usury; 4) Breach of Implied Covenant of Good-Faith & Fair Dealing; and 5) Violation of G.L. c. 93A, stemming from Plaintiff's foreclosure of a property known and numbered as 105 Homes Ave., Dorchester, Suffolk County, Massachusetts.

2. Until and unless Plaintiff's counsel is able to review the affidavit of Defendant's counsel, Plaintiff's counsel is unable to determine whether the reasons set forth therein apply to the merits of Defendant's Counterclaims.

3. When Defendant's counsel first notified Plaintiff's counsel of his intent to file a motion to impound his affidavit, Plaintiff's counsel indicated that if the Defendant was willing to voluntarily dismiss his Counterclaims with prejudice, the Plaintiff would not object to his Motion to Impound Affidavit. The Defendant, however, has refused to dismiss his Counterclaims. Thus, the Plaintiff presumes that Defendant's counsel's Motion to Impound encompasses and includes non-privileged information as to the merits of his Counterclaim.

4. The Plaintiff does not oppose Defendant's counsel's Motion to Withdraw, rather, the Plaintiff merely wants to review the grounds for his withdrawal to see if his reasons set forth have any bearing on the validity or invalidity of the Defendant's Counterclaims.

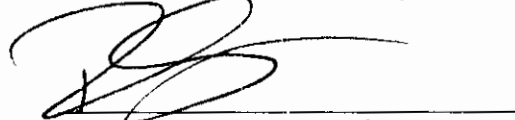
5. Defendant's counsel reference to MBA 96-3 in support of his motion to impound is unpersuasive because that opinion simply discusses a lawyer's right to seek permission to withdraw from a matter based upon nonpayment of fees. Moreover, the opinion permits a lawyer to reveal some information relating to nonpayment of a fee that might otherwise be confidential. (A copy of MBA Ethics Opinion 96-3 is attached hereto). An inference one can draw from the Motion to Impound by Defendant's counsel is that the grounds set forth include reasons other than failure to pay attorney's fees and specifically addresses the merits of Defendant's Counterclaims.

6. Plaintiff's counsel would not oppose the impounding of the affidavit from the general public, so long as the Plaintiff was able to review it.

**WHEREFORE**, Plaintiff's counsel requests that Defendant's counsel's Motion to Impound Affidavit be denied and that Plaintiff's counsel be entitled to review the affidavit, and for any other relief this Court deems proper and just.

Respectfully submitted,  
THE PLAINTIFF,  
By its attorneys,

BARRON & STADFELD, P.C.



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Dated: June 8, 2005  
[316024]

CERTIFICATE OF SERVICE

I, Randy J. Spencer, hereby certify that on June 8, 2005 I served a copy of the foregoing by mailing a copy first class mail, postage prepaid to:

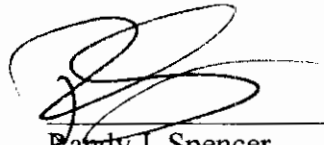
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